

ASSEMBLY BILL

No. 1621

Introduced by Assembly Member Klehs

February 22, 2005

An act to amend Section 701.8 of the Public Utilities Code, relating to electrical corporations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1621, as introduced, Klehs. Electrical corporations: BART.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under that law. Existing law authorizes the San Francisco Bay Area Rapid Transit District's (BART) system to elect to obtain electricity from multiple sources, including any of the following: (a) preference power purchased from a federal power marketing agency or its successor; (b) electricity supplied by one or more direct transactions; and (c) electricity supplied by any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system. Existing law requires any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity to BART, upon request by BART, to deliver preference

power purchased from a federal power marketing agency or its successor and electricity purchased from a local publicly owned electric utility, as defined, without discrimination or delay.

Existing law authorizes the commission to issue financing orders, to support the issuance of recovery bonds, as defined, by the recovery corporation, as defined, secured by a dedicated rate component consisting of fixed recovery amounts and fixed recovery tax amounts, as defined, to finance the unamortized balance of the regulatory asset awarded Pacific Gas and Electric Company in commission Decision 03-12-035.

This bill would provide, notwithstanding the above-described provisions creating a dedicated rate component for the recovery of the unamortized balance of the regulatory asset awarded to Pacific Gas and Electric Company, that electricity provided to BART that is purchased from a federal power marketing agency or its successor or from a local publicly owned electric utility, is not subject to fixed recovery amounts and fixed recovery tax amounts.

(2) The bill would declare that, due to the special circumstances applicable only to the Pacific Gas and Electric Company bankruptcy and to the BART District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) Under existing law, a violation of the Public Utilities Act or an order of the commission is a crime.

Because this bill would be a part of the act and would require an order of the commission to implement, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares both of the
2 following:

3 (a) It has been and remains the intent of the Legislature that
4 deliveries of federal preference power and electricity from local
5 publicly owned electric utilities to the San Francisco Bay Area
6 Rapid Transit District (BART) not be subject to fixed recovery
7 amounts or fixed recovery tax amounts to finance the
8 unamortized balance of the regulatory asset awarded Pacific Gas
9 and Electric Company in Public Utilities Commission Decision
10 03-12-035.

11 (b) It is the intent of the Legislature in enacting this act to
12 clarify existing law.

13 SEC. 2. Section 701.8 of the Public Utilities Code is amended
14 to read:

15 701.8. (a) To ensure that the commission regulated electric
16 utilities do not operate their transmission and distribution
17 monopolies in a manner that impedes the ability of the San
18 Francisco Bay Area Rapid Transit District (BART District) to
19 reduce its electricity cost through the purchase and delivery of
20 preference power, electrical corporations shall meet the
21 requirements of this section.

22 (b) Any electric utility regulated by the commission that owns
23 and operates transmission and distribution facilities that deliver
24 electricity at one or more locations to the BART District's
25 system shall, upon request by the BART District, and without
26 discrimination or delay, use the same facilities to deliver
27 preference power purchased from a federal power marketing
28 agency or its successor, or electricity purchased from a local
29 publicly owned electric utility, as defined in Section 9604.

30 (c) Where the BART District purchases electric power at more
31 than one location, at any voltage, from an electric utility under
32 tariffs regulated by the commission, the utility shall bill the
33 BART District for usage as though all the electricity purchased at
34 transmission level voltages were metered by a single meter at one
35 location and all the electricity purchased at subtransmission
36 voltages were metered by a single meter at one location, provided
37 that any billing for demand charges would be based on the
38 coincident demand of transmission and distribution metering.

(d) If, on or after January 1, 1996, the BART District leases or has agreed to lease, as special facilities, utility plants for the purpose of receiving power at transmission level voltages, an electric utility regulated by the commission may not terminate the lease without concurrence from the BART District.

(e) When the BART District elects to have electricity delivered pursuant to subdivision (b), neither Sections 365 and 366, and any commission regulations, orders, or tariffs, that implement direct transactions, are applicable, nor is the BART District an electricity supplier. Neither the commission, nor any electric utility that delivers the federal power or electricity purchased from a local publicly owned electric utility to the BART District, shall require that an electricity supplier be designated as a condition of the delivery of that power.

(f) The BART District may elect to obtain electric power from the following multiple sources at the same time:

- (1) Electric power delivered pursuant to subdivision (b).
- (2) Electric power supplied by one or more direct transactions.
- (3) Electric power from any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system.

(g) Notwithstanding Article 5.6 (commencing with Section 848), electricity delivered pursuant to subdivision (b) is not subject to fixed recovery amounts and fixed recovery tax amounts as defined in subdivisions (c) and (d) of Section 848.

SEC. 3. The amendment of Section 701.8 of the Public Utilities Code made by this act does not constitute a change in, but is declaratory of, existing law.

SEC. 4. The Legislature finds and declares that, because of the unique circumstances applicable only to the Pacific Gas and Electric Company bankruptcy and to the San Francisco Bay Area Rapid Transit District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the
2 penalty for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition of a
4 crime within the meaning of Section 6 of Article XIII B of the
5 California Constitution.

6 SEC. 6. This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety
8 within the meaning of Article IV of the Constitution and shall go
9 into immediate effect. The facts constituting the necessity are:

10 In order to significantly reduce the risks posed by the
11 continuing and lingering effects of the Pacific Gas and Electric
12 Company bankruptcy and future, potential energy crises to the
13 livelihood and mobility of Californians residing in the Bay Area,
14 the ability of industry to conduct business in the Bay Area with
15 their labor pool having affordable access to mass transit
16 resources, and the state's ability to continue to provide critical
17 transit services to its citizens in the San Francisco Bay Area
18 Rapid Transit District and surrounding counties served by its
19 facilities, it is necessary that this act take effect immediately.